



Commonwealth of Massachusetts
**DEPARTMENT OF HOUSING &
COMMUNITY DEVELOPMENT**
Mitt Romney, Governor ♦ Kerry Healey, Lt. Governor ♦ Jane Wallis Gumble, Director

DRAFT

31 Project-Based Voucher Assistance

On October 13, 2005, HUD published the final rule for the Project-based voucher program. This rule can be found at 24 CFR Part 983.

All regulations governing the tenant-based Housing Choice Voucher Program (HCVP) program, found at 24 CFR 982, are applicable to the PBV program, with the exception of those sections listed at Parts 983.2(b) and (c).

The PBV has two components:

New Construction/Rehabilitation, referred to as “**Development**” PBV and “**Existing**” PBV.

This Administrative Plan establishes DHCD’s PBV policies and procedures for each area of program operation required by 24 CFR Part 983. It also includes discussion about many other important areas of PBV program administration that will assist our regional agency administrators (RAA) (and any other interested public housing agency) undertake careful and accurate administration of this valuable Section 8 program component. To the extent feasible, this chapter has been designed to follow the structure of 24 CFR Part 983. Key DHCD PBV policy considerations, as they may be amended from time to time, are also included in DHCD’s Annual PHA Plan.

31.1 General

PHA Discretion to operate a PBV Program (983.5(c) and Maximum Amount of PBV assistance (983.6 (a))

DHCD began exercising its discretionary authority to operate a project-based component in 1991 and will continue to exercise this option under the October 13, 2005 final rule. The option to set-aside up to 20% of HCVP budget authority (983.6(a)) will continue to permit DHCD to develop and maintain long term safe, decent and affordable housing that is accessible to its Section 8 applicants and program participants. DHCD has not set a specific goal for the amount of its budget authority that it will dedicate to its PBV program; however, in any given calendar year, DHCD reserves the right to utilize up to 20% of its budget authority for its PBV program.

31.2 Selection of PBV Owner Proposals

31.2.1 Two Approved Methods for Proposal Selection (983.51(b)(1) and (2))

The final rule establishes 2 methods which a PHA can use to select owner proposals. These methods are found at 983.51(b)(1) and (2).

1. 983.51(b)(1) permits the PHA to publicly issue a competitive request for PBV proposals.
2. 983.51(b)(2) permits the PHA to select proposals that have successfully competed for housing assistance under a federal, state, or local government housing assistance, community development, or supportive services program, provided the proposal has been selected in accordance with such program's competitive selection requirements within three years of the PBV proposal selection date, and the earlier competitive selection proposal did not involve any consideration that the project would receive PBV assistance.

DHCD will use both methods of PBV proposal selection.

31.2.2 Public notice of PHA request for PBV proposals (983.51(c))

Public notice is required for PBV proposals that will be selected under 983.51(b)(1).

Just like HUD, DHCD utilizes its webpage at www.mass.gov/dhcd/ to make public all major announcements and all key documents for its entire complement of housing and community development programs and activities. Key areas of public notification for which DHCD utilizes its webpage include, but are not limited to: Notifications of Funding Availability (NOFA) and Requests for Proposals (RFP); all major policy documents, such as the Consolidated Plan, the Qualified Allocation Plan and the Section 8 Annual and Five-year PHA Plan; regulations, guidelines; and dates for public hearings.

DHCD will announce all PBV NOFAs and any subsequent modifications to these PBV NOFAs on its website.

“Existing” PBV NOFAs:

These NOFAs will be announced at least three weeks in advance of the prescribed due date. Any modification(s) to an “existing” PBV NOFA will be announced on the website and will indicate an effective date of the modification(s).

DHCD reserves the right to implement more than one “existing” PBV initiative at a time. In this instance, the specific NOFA requirements of each initiative will be publicly announced as described above.

“Development” PBV NOFAs:

DHCD currently operates two “development” PBV initiatives:

1. An initiative linked to DHCD’s bi-annual One Stop Affordable Housing Funding round; and
2. An initiative linked to DHCD/MassHousing’s Affordable Housing Trust Fund (AHTF).

DHCD reserves the right to implement additional “development” initiatives.

“Development” PBV NOFAs linked to DHCD’s Division of Housing Development’s bi-annual One Stop Affordable Housing Funding round

These PBV NOFAs will be announced on DHCD’s website at:

>www.mass.gov/dhcd/; >Housing Development; and >Public Housing and Rental Assistance; >Bureau of Federal Rental Assistance (BFRA). Also, the Housing Development Division has established an “**e-source center**”, a web-based list-serve that automatically sends notices of new funding initiatives, documents relating to all their various development programs, announces public hearings and issues other important notices to any agency or person that signs up for this list-serve. The e-source center is widely subscribed to by the development community in Massachusetts.

“Development” PBV NOFAs linked to DHCD/MassHousing’s Affordable Housing Trust fund (AHTF), and, any future development initiative, will be announced on DHCD’s website at: >www.mass.gov/dhcd/; >Public Housing and Rental Assistance; >Bureau of Federal Rental Assistance.

31.2.3 Selection of Publicly Solicited PBV proposals (983.51(b)(1))

“Existing” PBV proposals: DHCD will screen all “existing” PBV proposals. It will consult with the applicable RAA prior to making a final commitment of PBV funds for each project. DHCD’s “existing” NOFA provides for proposals to be submitted on a rolling basis. Each NOFA, its respective proposal application and review criteria will be posted on DHCD’s website. Each NOFA will indicate that DHCD will announce on its website the date it will stop accepting “existing” PBV proposals. Proposals will be reviewed on a rolling basis as they are received unless otherwise stated in the NOFA’s proposal selection requirements.

Awards will be contingent upon: 1) the availability of budget authority at the time the project is projected to be ready for occupancy; and, 2) the proposal’s consistency with the published review criteria.

“Development” PBV proposals linked to DHCD’s One Stop Affordable Housing Funding Rounds: DHCD’s Housing Development Division reviews and awards all of these “development” PBV proposals. This Division administers the Commonwealth’s LIHTC program, HOME program, and several other federal and state funded development programs, using the publicly announced competitive selection criteria they have established for these respective programs. (See Attachment A for a

complete discussion of each program administered by DHCD's Division of Housing Development, including the selection criteria and selection team composition.)

"Development" PBV proposals linked to DHCD's/MassHousing's Affordable Housing Trust Fund: MassHousing, which has been designated by DHCD to administer the AHTF program on its behalf, will award those AHTF projects that have requested PBVs, using the publicly announced selection criteria approved by DHCD.

"Development" PBV proposals for any future initiative: Awards of PBV for any future development initiative that DHCD may elect to implement will be made by DHCD's Bureau of Federal Rental Assistance and/or a publicly announced partner agency designated by DHCD for this purpose.

Preliminary Written Notification of PBV Selection to Owner

Once an application has been screened and preliminarily selected for PBV assistance on both the "existing" and "development" components, the BFRA will issue a notice of "conditional reservation" of PBV assistance to the owner (developer/project sponsor). This letter will advise the owner of all further requirements that must be satisfied prior to executing the Agreement to Enter Into a Housing Assistance Payments (AHAP) contract (in the case of "development" projects), or the Housing Assistance Payments Program (HAP) contract (in the case of "existing" projects.) Examples of these requirements could include, but are not limited to, satisfactory completion of the subsidy layering review (SLR), the environmental review (ER), approval of the owner's tenant selection plan, and final inspection of the units for HQS compliance. The letter will advise the owner that failure to complete all requirements for approval by HUD and DHCD will mean that DHCD will not be able to provide PBV assistance to the project.

31.2.4 Selection of PBV Proposals Previously Selected Thru a Non-PBV Competition (983.51(b)(2))

DHCD, at its option, may entertain requests to attach PBV assistance to units previously selected by a non-PBV competition, in accordance with the requirement of 983.51(b)(2)), under the following circumstances:

- Adequate PBV budget authority is projected to be available when the units are ready for occupancy;

- The request meets a compelling need and is otherwise consistent with DHCD's long term affordable housing goals;
- The project is otherwise in compliance with all HUD and DHCD PBV requirements;

The owner/project sponsor must initiate a request for PBV assistance to DHCD, in writing, accompanied by a letter from the agency that competitively selected the project for housing assistance under a federal, state or local government program. This letter, submitted on the selection agency's letterhead, and signed by an authorized official, must include a certification from the selection agency that the proposal was competitively selected by the agency in full compliance with all publicly advertised selection requirements and that proposal selection did not involve any consideration that the project would receive PBV assistance. Included with this letter should be:

- A copy of the NOFA or other similar solicitation for affordable housing assistance that the owner/project sponsor responded to;
- A description of the housing program for which the applicant successfully competed, noting any special deed restrictions and/or special considerations, like tenant selection preferences.

Once DHCD receives the selection agency letter, DHCD will request that the owner/project sponsor fill out a PBV application, and subsequently determine if a reservation of PBV can be made.

31.2.5 PHA-owned units (983.51(e))

The final rule permits PBV to be attached to PHA-owned units. It expands the definition of PHA-owned housing to include "agents" of the PHA that hold a direct or indirect interest in the building in which the PBVs will be located. Therefore, any proposal for PBV housing in which a DHCD Section 8 RAA has a direct or indirect interest must be considered PHA-owned housing.

All PHA-owned proposals must be approved by HUD, or an independent entity selected by HUD, after DHCD has granted its preliminary approval.

DHCD will employ the following selection process for any PHA-owned housing:

“Existing” PBV PHA-owned Unit Proposals: DHCD’s “existing” NOFA provides for proposals to be submitted on a rolling basis. DHCD will review the proposal(s) and make awards based upon its published criteria. Any “existing” PHA-owned proposal selected by DHCD will be forwarded to HUD for its review and approval, as required by the final rule. When making this request, DHCD will forward to HUD: 1) the owner/project sponsor application and all attachments; 2) the NOFA under which the proposal was submitted; and 3) the selection criteria used by DHCD to make its determination. Where DHCD’s publicly announced “existing” PBV initiative gives preference consideration to proposals that make available vacant units, DHCD will request that HUD make its review determination within 2 weeks of receipt of the request for review and approval.

“Development” PBV PHA-owned Unit Proposals: These proposals will have been selected according to the published criteria announced by DHCD’s Division of Housing Development or Mass Housing. A program description, a funding competition description for each program, the proposal evaluation and selection criteria for each program and the team performing the screening and selection for each development program is provided in **Attachment A**. If HUD requires additional information to demonstrate that these projects have been selected in accordance with the respective development program’s competitive selection criteria, DHCD will request that its Housing Development Division and/or MassHousing provide the additional information requested. Once HUD approval to proceed has been received, DHCD will issue the owner a preliminary written notification of PBV selection.

31.2.6 Housing Type - High Rise Elevator Project for Families with Children (983.53(b))

The final rule prohibits attaching PBV assistance to a high-rise elevator project that may be occupied by families with children unless the PHA initially determines there is no practical alternative, and HUD approves such a finding. The PHA may make this determination on a project-by-project basis. Prior to approving any such proposals, DHCD will consult with the Boston HUD office to ascertain what type of documentation would be required to potentially support such PBV projects, based upon each project’s particular demographics.

31.2.7 Subsidy Layering Review (SLR) - Prohibition of Excess Public Assistance (983.55)

The SLR is “intended to prevent excessive public assistance for the housing by combining (layering) housing assistance subsidy under the PBV program with other governmental housing assistance from federal, state, or local agencies, including assistance such as tax concessions or tax credits.” HUD indicates in the preamble to the final rule that it will issue additional guidance on the requirements for processing SLR requests.

1. DHCD must obtain from the applicant all the information required by the HUD mandated SLR checklist, found in **Attachment B**.
2. DHCD must review the SLR package prepared by the applicant for completeness and consistency with program requirements.
3. If it appears complete and acceptable, DHCD must forward the SLR package to HUD’s Boston office. This office will also review the material, and, if found acceptable, submit it to HUD Headquarters for final review and approval.

Because of the multiple reviews involved in completing a SLR review (DHCD, HUD Boston and HUD Headquarters), DHCD will immediately advise applicants that a final proposal selection determination cannot be made until this review is completed and approved by HUD.

31.2.8 Exceeding the 25% cap on number of PBV units in a building (983.56)

In general, no more than 25% of the units in a building may receive PBV assistance. Two categories of housing are automatically exempt from this requirement:

1. Units in a **single-family** building, defined as any building with 1-4 units;
2. Units that will house **elderly and/or disabled** households for the term of the HAP contract.

An additional category of units, referred to as “**excepted**” units, are also exempt from the 25% cap:

3. Units that will house a family that will receive **supportive services** for the term of the HAP contract.

RE: Elderly and Disabled Households

DHCD may support a limited number of PBV units targeted to elderly and/or disabled households. At DHCD's discretion, it may require that services targeted to the needs of the elderly and/or disabled are provided on a regular basis by qualified providers, and/or that the elderly units be part of an assisted living project, as defined by Section 983.3 (b) of the final rule.

RE: Families Receiving Supportive Services (983.56)

DHCD may support a limited number of PBV units targeted to families receiving supportive services, including those projects where the number of PBV units requested will exceed the 25% building cap. The types of services that DHCD will deem eligible to qualify a project to meet HUD's definition of "excepted" units include, but are not limited to: 1) **Household Training** (eg: homemaking, parenting skills, money management); 2) **Job Training** (preparation and counseling, job development and placement, follow-up assistance after job placement, completion of FSS "Contract of Family Participation"); 3) **Services and Resources** (appropriate to assist families to achieve economic independence and self-sufficiency); 4) **Child Care** (provide sufficient hours of operation and serve an appropriate range of ages); 5) **Counseling for parents and other kinship relations caring for children with needs** (programs for families adopting children from MA Department of Social Services (DSS), foster care programs, Grandfamily programs); 6) **Remedial Education** (education for the completion of Secondary or post-secondary education); 7) **Substance Abuse Treatment** (counseling and treatment for substance abuse)

It is not necessary that the services be provided at or by the project, if they are approved services.

Extent to which services will be provided

A family must have at least one member receiving at least one “qualifying” supportive service. Every participating family occupying an “excepted” unit in a PBV supportive services project must sign a “PBV Contract of Family Participation” designed by the project sponsor and tailored to the specific family’s needs. This contract must establish a minimum period of time of no less than one year in which the family is expected to participate in one or more services and achieve certain goals during the term of the contract.

The family may continue in occupancy in the “excepted” unit after they have successfully completed their supportive services contractual obligations. In this instance, the units will continue to count as “excepted” units for as long as the family resides in the unit.

DHCD Monitoring Family Receipt of Services (983.56.(b)(2)(ii)(C))

As required by the final rule, DHCD will monitor the tenants’ continued receipt of supportive services on an annual basis.

As part of the PBV application process, each project sponsor must articulate key program goals and core performance indicators in their PBV application. During each 12 month cycle of the family’s Contract of Participation, the project sponsor will be expected to maintain on-going evidence of the family’s participation in their service program and maintain agreed upon data for inclusion in an annual performance report (PBV-APR) to be submitted to DHCD. Upon receipt of this annual performance report, DHCD and/or its RAA will arrange to interview a percentage of families and service providers to verify that the services are being provided as reported and appear to be effective.

Failure by the family residing in an “excepted” unit, without good cause, to fulfill its service obligation will result in termination of the tenant from the PBV program and termination of the unit from the PBV program, unless it is re-occupied by another “qualifying family.”

31.2.9 Site Selection Standards (983.57)

Every PBV owner applicant must demonstrate that their project is consistent with HUD's statutory goal of "deconcentrating poverty and expanding housing and economic opportunities." DHCD will assess each application in this regard, based on the following HUD-mandated criteria:

1. **HUD Designated Zone** Whether the census tract in which the proposal will be located is in a HUD-designated Enterprise Zone, Economic Community, or Renewal Community.
2. **Public Housing Demolition** Whether a PBV development will be located in a census tract where the concentration of assisted units will be or has decreased as a result of public housing demolition.
3. **Significant Revitalization** Whether the census tract in which the proposed PBV development will be located is undergoing significant revitalization.
4. **Public Investment** Whether state, local, or federal dollars have been invested in the area that has assisted in the achievement of the statutory requirement.
5. **New Market Rate Units** Whether new market rate units are being developed in the same census tract where the proposed PBV development will be located and the likelihood that such market rate units will positively impact the poverty rate in the area.
6. **Decline in Poverty Rate** If the poverty rate in the area where the proposed PBV development will be located is greater than 20 percent, the PHA should consider whether in the past five years there has been an overall decline in the poverty rate.
7. **Educations and Economic Opportunities** Whether there are meaningful opportunities for educational and economic advancements in the census tract where the proposed PBV development will be located.

Each prospective DHCD PBV applicant must demonstrate to DHCD that their respective project satisfies the twin goals of deconcentrating poverty and expanding housing and economic opportunity, regardless of the project's poverty rate as defined by the most recent census data. DHCD will make its assessment of an applicant's project's compliance with achieving these goals based on the totality of the applicant's response, taking into consideration the target population to be served (i.e. family, elderly, disabled, populations needing supportive services).

DHCD will also further assess each proposal to determine if they achieve the following DHCD Consolidated Plan and Section 8 PHA Plan objectives:

1. Development and maintenance of an adequate supply of safe, decent housing that is affordable and accessible to residents with a range of income levels and household needs;
2. Assurance that MA residents with long-term support needs have access to appropriate services and accessible community housing options;
3. Assurance of full and fair access to housing for all residents.

HUD's criteria 1-7 above require the applicant to discuss each factor as it relates to the project's actual census tract. DHCD will only consider information about activity in neighboring census tracts if the information about the actual census tract demonstrates that HUD's goals of deconcentrating poverty and expanding housing and economic activity are being achieved in the actual tract.

31.2.10 Environmental Review (ER) (983.58)

Every PBV project is subject to HUD environmental review requirements. Prior to execution of an AHAP (for "development" PBV projects) and a HAP (for "existing" PBV projects), the owner must present evidence that the environmental review has been performed by a HUD-designated "responsible entity" and approved by HUD; or, where applicable, categorically excluded from review under the National Environmental Policy Act.

When both the owner and DHCD are not able to identify a "responsible entity" to perform the environmental review requirements, DHCD, in its capacity as a state housing and community development agency, and, a HUD-authorized "responsible entity", will take the steps necessary to complete the ER. If necessary, DHCD will authorize the applicable RAA to contract with an ER consultant that has demonstrated experience in the performance of such reviews to complete all the required steps to achieve HUD approval and/or a designation of "categorical exclusion", where applicable. The results of the consultant's work will be published for public comment, per HUD's ER requirements. DHCD will publish the results, and, at the appropriate time, the Request for Release of Funds will be sent to HUD for approval.

31.3 Dwelling Units

31.3.1 Additional PHA quality and design requirements (983.101.(e))

All DHCD PBV units must meet and maintain an inspection grade of B+ or higher in order to be eligible for PBV assistance. DHCD grading standards can be found in the Inspection Requirements chapter of DHCD's HCVP Administrative Plan. These standards are also reproduced as part of DHCD's "existing" PBV application, which can be found on DHCD's website @ www.mass.gov/dhcd/ >Public Housing and Rental Assistance; >Bureau of Federal Rental Assistance.

31.3.2 Annual Inspections (983.103.(d))

The final rule permits PHAs to annually reinspect at least 20% of all PBV units per HAP. DHCD may exercise this option. However, in order to assure that our housing quality inspection standard of B+ or greater is maintained in each PBV unit, DHCD expects to annually reinspect most, if not all, PBV units.

31.3.3 Remedies for HQS Violations (983.207(b)(2))

If PBV units are not maintained in accordance with DHCD PBV HQS standards (or other HAP requirements), the RAA may exercise any of its remedies under the HAP contract, including termination of assistance, abatement or reduction of HAP payment, reduction of contract units and termination of the HAP contract.

31.4 Requirements for Rehabilitated and Newly Constructed Units

All "development" PBV units require the owner/project sponsor to enter into an Agreement to Enter Into a Housing Assistance Payment (AHAP) contract with the appropriate DHCD RAA, prior to any demolition and/or construction.

31.4.1 Requirements That Must Be Satisfied Prior to AHAP Execution

It is imperative that each PBV developer understands that an AHAP cannot be executed until the following actions are completed and approved by HUD, where applicable:

1. A subsidy layering review (SLR) for any project that has any other government assistance from federal, state or local agencies, including tax concessions and tax credits. HUD, or an agency designated by HUD, must perform and approve the SLR.
2. An environmental review (ER) performed by the “responsible entity” (RE) designated by the city/town or state, or, a certification by the RE that a review is not required.
3. If a PHA-owned property, HUD must approve the selection of the proposal and designate another agency to perform inspections and determine rent reasonableness.
4. If a high-rise elevated building that will house families with children, HUD must approve the site, based on criteria that indicate that “there is no practical alternative” for family housing in the community.
5. In-place tenants must be determined Section 8 eligible and appropriately housed per DHCD subsidy standards. The unit cannot be assisted with PBV assistance if the tenant is not eligible and would have to be displaced.
6. Units must pass DHCD’s enhanced housing quality standard of a B+ or greater.
7. The owner must provide various certifications and provide the required attachments prior to AHAP execution.

FOR ALL PBV “DEVELOPMENT” PROJECTS, NO DEMOLITION OR CONSTRUCTION CAN BEGIN UNTIL AN AHAP IS EXECUTED IN ACCORDANCE WITH ALL HUD CRITERIA.

Failure to complete the above steps in accordance with HUD's criteria and timeline and to obtain the required approvals means that the proposal cannot receive PBV assistance.

31.4.2 Prompt execution of AHAP (983.153(c))

The final rule states that the AHAP must be executed promptly after PHA notice of proposal selection to the selected owner. DHCD will comply with this requirement provided that HUD and the environmental review "responsible entity" discharge their respective pre-AHAP responsibilities in a timely manner.

31.4.3 Additional AHAP Requirements for RAA and Owners

HUD AHAP Boilerplate

Until HUD updates the AHAP, Part 1, Form HUD 52531-A, dated 4/90 and Part 11, Form HUD-52531-B, dated 12/88 remain in effect as of the effective date of this Plan.

RAA AHAP Contract Number

The RAA is required to assign a contract number to the AHAP which will be the same number used for the HAP contract.

AHAP Effective Date

The effective date of the AHAP may either be the date of execution or a subsequent date. Under no circumstances may the effective date precede the AHAP execution date.

Other significant dates:

- Date for commencement of work, must be on or after the AHAP effective date and be a realistic date based on known possible delays.
- Time for completion of work should be based on estimated completion date, with some cushion provided for unforeseeable delays. The RAA, with DHCD approval, may extend the completion date if all work is not completed by the date indicated for reasonable cause acceptable to the RAA.

Contents of the AHAP:

- Exhibit A - In place of the owner's application (which will be maintained by either DHCD's Housing Development Division (DHD) or MassHousing), the RAA must include a copy of DHCD's PBV reservation letter and the Internal Memo from either DHCD's DHD or MassHousing to the BFRA, with a Memo to File stating that the complete application is available for viewing at the office of either DHCD or MassHousing, whichever was the selecting agency, during normal business hours.
- Exhibit B - The RAA must include the owner's narrative description of the work to be completed that contains: 1) a certification that currently the project does not substantially comply with HQS and additional DHCD inspection standards and requires the described work in order to be compliant; 2) A certification that the owners and other principals are not on the US General Services Administration list of parties excluded from federal procurement and non-procurement programs; 3) A Memo to File stating that the work write up for rehabilitation, or if new construction, the specifications and plans, may be viewed at the office of either DHCD or MassHousing, whichever was the selecting agency.
- Exhibit C - This is prepared by the RAA and includes:
 1. AHAP contract number;
 2. Project address;
 3. Number of units by bedroom distribution;
 4. Size of the units, square footage, and the number of bathrooms in each unit;
 5. Utilities and services to be provided by the owner at no additional cost outside of the contract rent.
 6. Estimated gross rents that cannot exceed 110% of the published FMR or the HUD approved Exception Rent (ER), minus any allowance for tenant-paid utilities. (See Section 31.7.2 for a discussion about rents for units in LIHTC and HOME buildings.)
- Exhibit D - A copy of the Housing Assistance Payments (HAP) contract, Form HUD-52530-A, that will be executed when the units are complete and accepted by the RAA; completed as to

owner and RAA name, contract number, (the same one used for the AHAP) and Exhibit B of the HAP contract which lists the services, maintenance and utilities to be provided by the owner at no additional cost outside of the contract rent.

- Exhibit E - If the work is to be completed in stages, and brought under HAP in stages, this exhibit should indicate, by unit number, when each stage will be completed and ready for HAP.
- Exhibit F - The architect's certification as explained in the AHAP.
- Exhibit G - If PBV will be attached to nine or more units in the project the Davis-Bacon (D-B) Wage Rate Schedule, available online at <http://www.access.gpo.gov/davisbacon> will be exhibit G.

*Each page of **all** exhibits must include the: project name, address, contract number and exhibit letter.*

All construction must be completed within the time specified in the AHAP. When all work has been completed and the units pass the HQS inspection and are accepted by the RAA, the owner and the RAA will execute the HAP contract.

With the exception of Davis-Bacon monitoring discussed below, monitoring of Section 3 compliance in part II of the AHAP involves informing the owner of the contractual obligations contained in Part 2 of the AHAP and, where applicable, keeping a copy of owner certifications of compliance in the project file.

Davis-Bacon (D-B)

Projects that will have nine or more units assisted with PBV are subject to D-B prevailing wage provisions for PBV. Even if there is HOME money in a project and it would ordinarily not be subject to D-B until 12 or more units are receiving assistance, the PBV award will require D-B compliance at nine units. The General Contractor (GC) is responsible for compliance with D-B for all employees on the site.

If D-B provisions apply to the project, the owner is responsible for insuring that the appropriate language is contained in the construction contract(s). If another entity has not been identified by either DHCD's

DHD or MassHousing to monitor D-B compliance, it is the responsibility of the administering RAA to monitor it. The RAA may request DHCD assistance in meeting this obligation. Attachment C provide a complete overview of the RAA's Davis-Bacon responsibilities.

31.5 Housing Assistance Payments Contract

31.5.1 Identifying “Excepted” Units (983.203(h))

If there will be PBV attached to more than 25% of the units in a multifamily building, the “Excepted units” that will be set aside for the qualifying families must be identified.

31.5.2 Term of HAP contract and Effective date of first payment (983.205(a))

The HAP contract may be executed for a term of up to ten years based on the owner’s request and DHCD approval. Under no circumstances may an assisted lease be made effective, or subsidy payments begin, prior to the effective date of the HAP contract.

31.5.3 HAP Contract Extensions (983.205(b))

Within one year of expiration of the initial HAP contract, DHCD may agree to extend the contract for an additional term not to exceed to five years. Any extension of the term must be on the form and subject to the conditions prescribed by HUD at the time of the extension. Subsequent extensions, up to a maximum of 5 years per extension, are subject to the same limitation.

Factors to consider if contract extension is requested

DHCD will consider several factors in its decision whether to extend an expiring HAP contract, including but not limited to:

- Owner compliance with HQS and consistent maintenance of the B+ or higher inspection grade
- Rate of tenant turnover. A high rate (more than 25% annually), may indicate tenant dissatisfaction with the unit or owner.
- Timeliness of owner reporting of vacancies in order to minimize the number of vacancy claims filed.
- Frequency and length of unit vacancies.
- Ease of re-leasing units at turnover.
- Owner’s overall compliance with the HAP contract provisions.

31.5.4 Wrong unit size for in-place family at time of contract extension request

If an in-place family's bedroom needs have changed at the time of contract extension, and the family is no longer eligible for that particular unit size, the HAP contract may not be extended for that unit. In this case, the family must be issued a voucher at least 120 days prior to the HAP expiration date. If the family fails to use the voucher during its initial and any extended term, the voucher will expire, and the family will be responsible for the full gross rent of the unit.

31.5.5 Termination of the HAP Contract by Owner Because of Rent Reduction (983.205(d))

The owner may terminate the HAP contract, if, as the result of a rent reasonableness test performed by the RAA, the rent is reduced below the initial HAP contract rent. In this case, the tenant must be offered a tenant-based voucher.

31.5.6 HAP contract amendment to add or substitute contract units (983.206(a) and (b))

Substituting contract units (983.206(a)): DHCD will permit the owner to substitute a different unit, with the same number of bedrooms in the same building, for a previously covered contract unit, provided the owner has otherwise acceptably performed all requirements under the HAP contract.

Amendment to add contract units (983.206(b))

DHCD will permit additional PBV units to be added to the PBV HAP contract, provided:

1. The total number of units in the building that will receive PBV assistance, or other project-based assistance, will not exceed 25% of the number of dwelling units (assisted or unassisted) in the building (or the 20% cap on budget authority permitted to be used for PBV assistance).
2. The HAP can be amended during the three year period immediately following the execution date of the HAP contract.
3. The owner has otherwise acceptably performed all requirements under the HAP contract.

31.5.7 HQS and rent reasonableness requirements prior to contract extension

Prior to the extension term all units must be inspected for HQS compliance at an inspection grade of B+ or better, a rent reasonableness test by unit size must be performed by the RAA and the units must be eligibly occupied and size appropriate for the in-place family..

31.5.8 Termination of Assistance

Reduction of unit(s) from HAP contract for tenant-caused program violations

If a tenant family is terminated by the RAA for program violations during the term of the HAP contract, both the owner and participant family will be notified by letter that assistance will be terminated effective one calendar month from the date of the notice. DHCD tenant-based HCVP program termination appeal procedures apply to tenants of PBV units. In the event the termination is upheld but the tenant remains in place, the subsidy may be moved to another vacant unit of the same size and quality in the same project (with no increase in the total number of units to be assisted) if requested by the owner. If no eligible unit is available, or if the owner does not request a unit replacement, the HAP must be reduced by that one unit until such time as the unit becomes vacant and available to another applicant family during the term of the HAP contract. Ineligibly occupied units will not be included in any HAP contract extension or renewal.

HAP contract options when tenants become ineligible through no-fault of tenant household

Families that become ineligible through no fault of the family, such as when an increase in household income results in 30% of its adjusted monthly income being equal to or greater than the gross rent for the unit, may remain in the unit paying the full rental amount. A family may remain in place and pay the full rental amount without assistance indefinitely. If the project is partially assisted the owner may request to substitute another same size comparable unit for the ineligibly occupied one. If no such request is made by owner, the HAP contract will be reduced by one unit. The subsidy will be made available to the next family on the HCVP waiting list if DHCD has available funding.

If a family remains in place paying the full rent, and subsequently becomes income eligible, the unit may be restored to the HAP contract under the following circumstances:

- 1) the family becomes income eligible; and
- 2) the owner did not substitute a different unit when the HAP contract for the ineligibly occupied unit was terminated.

Unlike the HCVP, the PBV program does not provide for a six-month zero subsidy window for participants in PBV units. The only way an over-income tenant who subsequently experiences a reduction in income could be reinstated to the PBV program is if the tenant stays in the terminated unit paying full rent, as described above, and the owner did not substitute another unit.

31.6 Occupancy

31.6.1 In-place tenant eligibility (983.251)

Immediately following the conditional selection of an owner's PBV proposal, for both PBV "development" and "existing" components, any in-place household must be notified by the owner that they will be entitled to PBV assistance if they are determined program eligible, including being appropriately housed with the correct number of bedrooms. If the in-place household is determined to be ineligible, the unit(s) will not be eligible for PBV assistance and the household must be advised that they will not be displaced.

Because of the various time delays in getting the various HUD approvals (when required) completed, the RAA will not perform the final program eligibility determination for any in-place tenant until the unit(s) have been otherwise approved for PBV assistance (i.e. passed HQS, met all other HUD requirements). Final eligibility includes the determination that the in-place household is appropriately housed with the correct number of bedrooms.

31.6.2 In-place non-eligible households (983.251(b)(2))

There are a few possible options for units occupied by ineligible in-place tenants:

1. In the event that the in-place household is otherwise eligible for PBV assistance, but is "over-housed" (i.e. occupying more bedrooms than

needed), at the owner's request, the RAA will be authorized to enter into a HAP contract for the PBV unit, but at the lower payment standard. Once the household vacates, the unit may be re-occupied by a suitably sized family, and the higher rent will be restored.

2. If the unit is located in a partially assisted building, and not more than 25% of the units are receiving PBV assistance, the owner may substitute another unit of the same size for the ineligibly occupied unit.

3. If the household is "under-housed" (i.e. needs more bedrooms than available), unless the owner can find a suitable replacement unit for the household that the household agrees to move to, the unit cannot be brought under HAP contract.

31.6.3 Selection From PHA waiting list (983.251(c))

DHCD will maintain a site-specific waiting list for each respective PBV project.

Notification of all HCVP Applicants

All applicants on DHCD tenant-based waiting list were notified in October 2005 of their opportunity to be listed on individual PBV lists, and provided with a number to call if they want to apply for this program at a later date. DHCD amended its tenant-based HCVP pre-application to notify any HCVP applicant of their right to be listed on one or more of these PBV lists.

Referrals to PBV site-specific waiting lists

PBV owners and project-sponsors are encouraged to refer applicants to the site-specific waiting list for their respective project.

Site-specific waiting list information available on DHCD's Website

DHCD's PBV site-specific waiting lists are available on DHCD's website at: >www.mass.gov/dhcd/; >divisions; >public housing and rental assistance; >Bureau of Federal Rental Assistance Programs.

Each site-specific waiting list identifies:

1. Name of the project;
2. Location of project;
3. Number of bedrooms in the project;

4. Any special occupancy considerations, such as elderly, disabled, services.

31.6.4 Listing in-place eligible households on both the site-specific and master HCVP waiting list (983.251(b)(2))

All in-place households must be simultaneously listed on the appropriate RAA's HCVP *and* site specific waiting lists. These households must receive an absolute selection preference. If the unit is not appropriately sized for the in-place household, but another unit in the building is, the owner must offer this unit to the household before accepting any referrals from the RAA waiting list.

31.6.5 Timing of Referrals for “Development” and “Existing” PBV projects

Tenants for vacant PBV units will be selected by the owner from RAA referrals from the site-specific waiting list.

For “development” PBV projects: the owner must request referrals at least sixty days prior to the anticipated HAP effective date to begin tenant selection.

For Existing projects: the list of referrals will be sent to the owner by the appropriate RAA when it receives written approval to proceed to HAP contract from DHCD.

In all instances, the RAA will refer more applicants than there are units available, in order assure that the units are filled as quickly as possible and to provide the owner with a reasonable pool of potentially acceptable applicants, based on the owner's selection criteria.

Referred applicants who lose contact with the agency for a period greater than 2 weeks will be deemed to have refused a potential offer of a unit. The RAA cannot require the owner to hold a unit vacant while it attempts to locate the applicant.

31.6.6 Owner's written tenant selection plan

Prior to AHAP or HAP execution each owner must submit a tenant selection plan for approval by DHCD and the RAA. Failure to present an acceptable selection plan will result in DHCD's withdrawal of the offer to provide PBV assistance to the project.

Each tenant selection should address, at a minimum, the following criteria:

- The owner's screening criteria and methods used to screen.
- The owner's certification that the owner uses the same screening criteria and methods to screen for both assisted and unassisted tenants.
- If a credit check will be part of the screening, the owner must include the minimum acceptable score.
- A statement that the owner will return to the RAA a copy of the applicant referral list that shows the date and time that each referred applicant contacted the owner and the final status of the contact.
- A statement that all those applicants that pass the owner screening will be referred back to the RAA as potentially acceptable tenants for a future vacancy.
- A statement that owner denials will be in writing to the applicant listing the reason(s) for the denial, with a copy to the RAA.

31.6.7 Timing of owner selection and RAA verification of tenant eligibility

When the owner selects from the list of referrals provided by the RAA in accordance with its written tenant selection plan, the owner does not have to screen the referrals in order of placement on the RAA waiting list. Rather, the owner should screen prospective applicants based on the order in which the applicant contacts the owner to see the unit.

Because owner screening typically takes much less time than RAA eligibility screening, the RAA should perform program eligibility certification **after** the referrals have passed the owner screening.

Because referrals are generally made to the owner without the RAA first determining Section 8 eligibility, both the owner and the applicants must be notified, in writing, by the RAA, that among those applicants that meet the owner's selection criteria, the first applicant that contacts the owner and is approved by the owner, who is subsequently determined eligible by the RAA, will be offered the unit.

31.6.8 RAA notification to applicants about the PBV unit selection process

The RAA must clearly outline the admissions process in the selection letter that is sent to the applicant. This information should include information

about any special features in the project and any selection preferences, where applicable.

Examples of special considerations could include:

- if the project is one in which eligibility will be contingent upon the family's willingness to participate in a program of supportive services;
- if a preference will be provided to disabled applicants who can demonstrate a need for specific services provided both on and off-site by the project sponsor; , or,
- if the units are limited to those applicants who are eligible for assisted living.

The owner should be encouraged to prepare additional information about the project that the RAA can include in its mailing to the applicants.

31.6.9 Applicant right to appeal an owner denial

If an owner denies a unit to a referred applicant, the owner must send a written notice to the applicant clearly stating the reason(s) for denial. The owner must provide a copy of this denial letter to the RAA. The letter must advise the applicant of any appeal rights provided by the owner. The applicant may request that the RAA review the owner's denial for compliance with the owner's approved written tenant selection plan.

31.6. 10 RAA briefing of applicants selected to occupy a PBV unit

All applicants selected to occupy the PBV units must be briefed on program benefits and responsibilities. The oral briefing must include information on a description of how the PBV program works and family and owner responsibilities. Each briefed family must receive a packet that contains:1) Information on how the RAA determines the total tenant payment for the family;2) family obligations under the program; and 3) applicable fair housing information.

If the family head or spouse is a person with a disability the RAA must take appropriate steps to insure effective communication, in accordance with 24 CFR 8.6, in conducting the oral briefing and in providing the written information packet, including appropriate, alternative formats.

31.6.11 Filling accessible units

The owner/project sponsor must make every effort to refer eligible households that would benefit from the unit's accessibility features to the RAA before DHCD will permit the RAA to lease such a unit to a non-handicapped applicant.

31.6.12 Removable of applicant from site-specific list

Rejection by an applicant of the largest bedroom size in the project for which they are eligible will result in removal of the applicant's name from that project's waiting list. For instance, an applicant that refuses a one-bedroom unit in a project will not be referred to a smaller unit (0BR, ESRO, SRO) in that same project. The RAA must notify the applicant of this removal in the initial selection letter, or a subsequent letter, before the removal occurs.

31.6.13 Student Status

An SRO PBV unit may be occupied by a student who is also receiving assistance under title IV of the Social Security Act, or enrolled in a job training program receiving assistance under the Job Training Partnership Act, or under other similar Federal, State, or local laws.

An SRO PBV unit may not be occupied by a full time student except as described above.

A full time student is defined by the IRS as taking 12 credit hours a semester or attending school full-time 5 months per year at an educational institution with regular facilities, other than a correspondence or night school.

Student status is to be monitored on a tax year basis; thus an applicant would not be eligible if the person had been a full-time student for 5 months of the calendar year, even if they had graduated prior to applying for a PBV unit. RAAs should adjust tenant certification procedures to consider student status according to this interpretation.

In addition, apart from the selection criteria discussed above, higher education students who are part of participant households are also subject to income scrutiny per 24 CFR 982.552.

31.6.14 Applicant Responsibility for Updating Information

Applicants will be placed on each PBV waiting list by the date and time the application is received. Applicants for any site-specific PBV project that are not on the HCVP waiting list will be automatically listed on the HCVP waiting list. If the applicant's household composition is not appropriate for the project, the RAA will not place the applicant on that project's waiting list. It is the applicant's responsibility to follow up with the RAA to verify that they were placed on each respective list for which they applied.

It is the applicant's responsibility to make any requests for changes on the lists they have applied for if such changes would be necessitated by a change in the applicant's family size and/or composition. Failure by the applicant to maintain up-to-date family size and composition information with the RAA may adversely affect its position on some or all site-specific lists.

31.6.15 RAA denial of eligibility for PBV applicant

The RAA is responsible for defending its decisions pertaining to the applicant's eligibility for PBV assistance. HCVP appeal procedures will be utilized and shall be the same as currently in effect for the HCVP, as set forth in Section 9 of this Administrative Plan.

31.6.16 Preferences

A. Regional Residency Preference

A regional residency preference will be applied as a ranking preference to all PBV applicants. Applicants may apply to units outside of their region, but they will not be selected until all applicants with a residency preference have been exhausted.

B. Local Residency Preference

To further the creation of permanently affordable rental housing, DHCD may agree to establish a limited local residency preference for up to 50% of the units developed pursuant to certain PBV development projects, *only* in those communities where the local housing authority does not have its own Section 8 vouchers available for such PBV projects (or the community does not have a LHA) *and* the project would not otherwise be approved by the city or town without a local residency preference. The owner will be required to submit evidence from the city or town that these conditions have been met, prior to DHCD consideration of a local preference.

C. Elimination of Singles Preference for SRO Units

Due to the difficulties inherent in maintaining occupancy in SRO units, DHCD will permit the admission of single person households that are not elderly or disabled for these units provided all other eligibility criteria are met. However, the elimination of the single's preference does not apply to full time students.

D. Preference for Disabled Households Needing Services (983.251(d))

DHCD may support projects that require that preference be given to disabled households that need services offered at a particular project, in accordance with the following HUD conditions and criteria:

- Preference cannot be granted to persons with a **specific disability**.
- The project sponsor must document that the applicant has a disability that **significantly interferes** with their ability to **obtain and maintain** themselves in **housing**; and,
- Who, **without appropriate services** will not be able to obtain or maintain themselves in housing; and,
- For whom such **services cannot be provided** in a **nonsegregated setting**. (i.e. a tenant-based voucher for an independently selected unit would not meet the needs of the applicant.)
- Disabled residents **shall not be required to accept** the particular services offered at the project.
- In advertising the project, the owner **may advertise** the project as offering services **for a particular type of disability**; however the project **must be open** to all **otherwise eligible persons** with disabilities who may benefit from the services provided.

D1. Who determines tenant eligibility?

The project sponsor must identify in their application which professional organization and/or independent individual(s) will make the assessment that a disabled applicant meets the criteria listed in Nos. 2-4 above. Such professionals could include licensed medical, psychological or allied mental health and/or human services professionals. Whomever the project sponsor selects to make the assessment must sign a certification form that either

attests to or rejects each applicant's need for services in accordance with Nos. 2-4 above. DHCD will provide the form to be used in each instance.

D2. Applicant referrals:

All disabled applicant referrals to these units will be made from the project's site specific waiting list (983.251(c)(3)) by the appropriate DHCD regional administering agency (RAA). All applicants referred from the list to the project will be sent a description of the project by the RAA, prepared by the owner/project sponsor, which explains the preference criteria for tenant selection. All applicants must be advised, in writing, by the owner, of the selection determination.

D3. Applicant Right to Appeal Rejection of PBV Unit Based On Failure to Demonstrate Need for Services Offered

Any applicant denied the preference consideration for the project providing services must be offered a right to appeal the decision made by the project sponsor. The owner/project sponsor must include in their PBV application to DHCD the specific criteria they will use to assess an applicant's need for services and a sample letter that they will use to notify both the applicant and the RAA that they have been determined ineligible. DHCD will terminate the HAP contracts of any project sponsor that has a track record of routinely rejecting otherwise qualified applicants in order to serve a specific client population.

E. Local preference for families eligible to receive supportive services where less than 25% of a building's units will have PBV

DHCD may allow a local preference for families that can demonstrate that they need the same types of supportive services allowed for "excepted units" (see Section 31.2.8) in a project. However, although such families can be required to sign a PBV Contract of Family Participation as a condition of occupancy, these families cannot be terminated from the PBV program for failure to participate in and/or complete a service program.

31.6.17 Overcrowded, under-occupied, and accessible units (983.259)

A. Under-Housed

Should a change in family size or composition cause a family to become under-housed to the point of causing the unit to be non-compliant with HQS space requirements and there is either an available appropriately sized PBV unit or a tenant-based voucher available for the family, it must relocate with assistance or be terminated from the program. If there is no voucher available to issue to the family, or an available comparable PBV unit to which the family may relocate, the family will remain in place without penalty to the owner until the family can relocate with assistance.

B. Adding A Family Member

If a request from the family to add another member that is not by birth or court-order would cause the family to breach HQS space requirements, such request must be denied by the owner and the RAA. If such family has been in good standing for at least one year at the time of the request to add a

member, then the request may be approved if the RAA has a voucher to issue to the family or there is an available PBV unit of appropriate size for the new family composition.

C. Overhoused

After the first year of tenancy, if a family becomes over-housed due to a change of family size or composition, the family must relocate to a smaller PBV unit or accept a voucher to relocate. If there is no appropriately sized comparable PBV unit or voucher available for the family, it may remain in place with no reduction in the contract rent until such time as there is a voucher or unit available for the family to relocate with assistance. If the family has failed to move with assistance within the voucher term limit, the family must be terminated from the program. If the project is partially assisted, the owner may request to substitute another comparable unit for the one that is ineligibly occupied.

D. Inappropriately-Housed in an Accessible Unit

The RAA must utilize a lease addendum that requires an inappropriately housed family to move from an accessible unit when a family that needs the accessibility features is identified for the unit.

In order to minimize loss of income to a project, an accessible unit may be leased to a family that does not require the special features if it has been vacant for 60 days or more and the RAA has exhausted its outreach sources. Such a family is inappropriately housed and is required to sign the lease addendum agreeing to move from the unit within 45 days of being notified by the RAA that a family that includes a person with mobility impairment has been identified for the unit. If there is a suitable PBV unit available within the project, the inappropriately housed family must move to that unit. If there is no PBV unit available, the RAA will issue an available tenant-based voucher to the family. If the family fails to relocate with assistance within the voucher term limit, the family must be terminated from the program. If there is no unit or voucher available, the family will remain in the accessible unit without penalty until such time as one or the other becomes available to the family.

31.6.18 Requirement for “remaining member(s)” of an “excepted unit” (983.261(d))

As discussed in Section 31.2.8 of this plan, the three household types that can qualify a unit as an “excepted” unit include: 1) elderly; 2) disabled; and

3) households where one or more members participate in a program of supportive services under the terms of a PBV Contract of Family Participation.

In each instance, any remaining family member(s) of “excepted” units that no longer qualifies for “excepted unit” status must vacate the unit within a reasonable period of time, in order that the PBV unit can be used for the intended “qualifying” household type. DHCD will issue a tenant-based voucher to the remaining family member(s), provided they continue to be program eligible. They must vacate the unit within DHCD established voucher term. Exceptions may be permitted for reasonable accommodation or mitigating circumstances.

Failure to move with tenant-based voucher assistance will result in program termination. If the household remains in-place after the voucher expires, it will be responsible for the full contract rent.

Failure of remaining family member(s) to vacate the “excepted” unit by the expiration of the mobile voucher term

If the family fails to vacate the PBV unit within the established time, the unit must be removed from the HAP contract unless the project is partially assisted, and it is possible for the HAP contract to be amended to substitute a different unit in the building; or the owner terminates the lease and evicts the family.

31.6.19 Family Right to Move (Opt Out Vouchers) (983.260)

At the end of one full year of assisted tenancy in a PBV unit, a participant in good standing may request a tenant-based HCVP voucher and move to a unit of their choice with continued assistance. If the RAA does not have an available voucher the tenant may request placement on the PBV “opt out” waiting list. The participant may not be placed on this list until they have been in the unit for a full year as a tenant in good standing. When a voucher becomes available, names will be selected from this list in chronological order, after any inappropriately housed or wrong-size unit families have been offered the opportunity to move with assistance. This family must be given the next available HCVP vouchers before any other applicants.

Because the tenants have the right to move with assistance at any time after they have been a tenant in good standing for one year, it is anticipated that the owner will agree to a mutual termination of the lease should such request

be made mid-term (after the first full year of occupancy.) Owners must have good reason to deny such mutual termination. Because the RAA is not a party to the lease, it may not give the family permission to break the lease; however, it may choose not to penalize the family and instead permit them to relocate with a tenant-based voucher.

Term of opt-out voucher

PBV participants that request an opt-out tenant-based voucher to relocate will be issued an available voucher for a 60 day term. At expiration of the voucher term, if the family has not located a program eligible unit to which it can relocate with assistance, it must wait until its next annual lease anniversary before again becoming eligible to request a tenant-based voucher. Because of the time involved in filling PBV units and the need for an owner to have some control over vacancy loss, the opt-out voucher will not be extended beyond 60 days, except for reasonable accommodation or mitigating circumstances acceptable to the RAA.

31.7 Rent to Owner

At initial HAP contract, the maximum gross rent will be set at the lesser of: a) 110% of the applicable FMR; b) the HUD-approved exception rent; c) the reasonable rent, or d) the owner requested rent. With the exception of units with other subsidy (see Section 31.7.2), these are the standards for setting PBV gross rents.

31.7 1 Rent Reasonableness

The RAA must perform a rent reasonableness test on all contracted units, both at initial HAP and under the following circumstances:

1. When the owner requests a rent adjustment;
2. When the owner requests to substitute an assisted unit;
3. If there is a change in the allocation of responsibility for utilities; and
4. If there is a 5% or greater reduction in the HUD published FMR.

The contract rent may be adjusted up or down as indicated by the results of the rent reasonableness test. This requirement means that there may be occasions when a PBV rent must be reduced because of verified decreases in rent levels for comparable unassisted units in the PBV community.

31.7.2 Rents For Units With Other Subsidy (983.304)

1. The gross rent for a LIHTC unit located **inside a qualified census tract** cannot exceed the LIHTC rent, provided that the LIHTC rent is otherwise determined to be rent reasonable by the RAA. The gross rent for a LIHTC unit located **outside of a qualified census tract** may exceed 110% of the published FMR, if the LIHTC rent is higher than 110% of FMR, and, if the RAA determines that it is reasonable and comparable to rents for other unassisted units in the same building or other comparable buildings.
2. High HOME rents are limited by the high HOME rent formula.

LIHTC and rent reasonableness consideration

LIHTC units are “assisted” units for purposes of rent comparability and may not be used for rent reasonableness. LIHTC units located outside of a qualified census tract where rents exceed the payment standard are not considered assisted for this purpose.

31.7.3 Rent Increases (983.302(b) (2))

Each year at the HAP contract anniversary date, the owner may be granted a rent adjustment up to the limits discussed in Section 31.7.2 based on the published FMR or any HUD exception rent. Any owner request for a rent increase automatically requires the RAA to perform a rent reasonableness review.

The owner must request the increase in writing at least 60 days prior to the HAP contract anniversary date. If the request is made less than 60 days prior to the HAP anniversary date, it may delay the effective date of the RAA approved rent adjustment. Adjustments may not be applied retroactively. Requests from owners received after the HAP anniversary date will, if approved by the RAA, be effective on the first of the month following the date the request is received by the RAA. A late rent adjustment request will not adversely affect the dates of future adjustments.

31.7.4 Rent Decreases (983.302(c))

If the owner requests an adjustment and the rent reasonableness test indicates that rents have decreased, the RAA must reduce the contract rents to owner at the HAP anniversary date. Rent reductions are dependent upon a written request for a rent adjustment from the owner or under the other

conditions listed above for when the RAA conducts a rent reasonableness test.

31.8 Payment to Owner

31.8.1 Vacancy Payments During the Term of the PBV HAP Contract (983.352(2))

There is no initial vacancy payment for units not filled at the effective date of the HAP contract. The owner is responsible for notifying the RAA of pending vacancies immediately upon receiving notice from a tenant of intent to vacate the unit. In the event of a vacancy that occurs without notice to the owner, the owner must notify the RAA immediately upon learning of the vacancy, but in any event, not later than the first missed rent payment by the tenant family. Provided that the owner has taken all steps necessary to prevent vacancy loss from occurring, including keeping the unit compliant with HQS, up to 60 days of vacancy payments may be paid if a unit remains vacant for that length of time or longer. The purpose of the vacancy payments is to not unduly penalize the owner during the tenant eligibility certification. Requests for vacancy payments must be in writing and must be made during the first month of a new lease-up or in the 30 days subsequent to the 60 day vacancy period, whichever comes first. Payment may only be made when the vacancy period has elapsed. The owner's request must certify that the vacancy is not the fault of the owner and that all reasonable steps were taken to fill the unit expeditiously. The RAA will consider the frequency and scope of requests for such payments in its decision whether to renew an expiring HAP contract.

An owner is not entitled to vacancy payments unless the unit is HQS compliant and in a rentable condition. The initial 30 days of vacancy may be allowed for the routine repair period while a new tenant is being processed for the unit. If a new tenant is not identified during the repair period, through no fault of the owner, an additional 30 days of vacancy loss may be paid for a total of 60 days. If referrals are not promptly requested by the owner, or applicants screened promptly upon responding to a referral, the owner will not be eligible to receive the full 60 day vacancy payment. In these instances, either late notice of pending or actual vacancy, or non-compliance of the unit past the 30 day repair period, the RAA may prorate the vacancy payment based on the eligible period of vacancy during the 60 days.

ATTACHMENT A

SELECTION CRITERIA FOR DHCD DEVELOPMENT PROGRAMS

Twice yearly, the division issues a NOFA for sponsors seeking funding for rental housing development projects. Applicants are required to submit proposals via a One-Stop application package and those materials are reviewed by our staff with the support of contract architects. Deals seeking HIF and/or FCF funding also are reviewed by Community Economic Development Assistance Corporation (CEDAC) staff. Proposals are reviewed according to selection criteria, generally outlined in the Commonwealth's Qualified Allocation Plan and award decisions are made based on these reviews, along with the availability of funds. Often, projects must apply several times before receiving an award. The One-Stop application package is available at: www.onestop.com. Mass Housing Investment Corporation (MHIC) designed, owns and operates this OneStop system for the Commonwealth's development programs. **(check accuracy of statement)**. The QAP and all other related selection criteria are published on the Division's website.

Linking DHCD's PBVs with these development projects makes it possible for the division to meet their LIHTC goal of setting aside 10% of the units for households with incomes at or below 30% or area median income and to achieve the same outcomes for the other DHCD-funded development programs.

Low Income Housing Tax Credits (LIHTC)

LIHTC Description

The Low Income Housing Tax Credit program is a federal program overseen by the U.S. Department of the Treasury through the Internal Revenue Service (IRS). The program is administered in all 50 states by state allocating agencies. The tax credit program was first implemented in 1987 and has supported the construction or rehabilitation of over 1.5 million rental units since that time. Each allocating agency receives a certain amount of credit annually to award to eligible projects. The allocating agency in Massachusetts is the Department of Housing and Community Development (DHCD). Two other agencies – MassHousing and MassDevelopment – are sub allocators of certain types of credit on behalf of DHCD. The sponsor of

a rental project submitted for a tax credit allocation has the ability to sell the credits to an investor and use the sale to generate equity for the project.

The tax credit program supports the construction or rehabilitation of multifamily rental housing for individuals or households whose incomes are less than 60% of area median income. Rents in tax credit projects are established to be affordable to such households.

DHCD's tax credit portfolio consists of 450 projects with over 30,000 units located throughout the state. The Department monitors the projects regularly to verify physical stability and ensure that the proper income levels are being served.

LIHTC Funding Competitions

Each state is required to publish selection criteria for projects annually in a public document called the **Qualified Allocation Plan**. In accordance with this requirement, DHCD publishes its selection criteria and holds **two funding competitions** each year to award the credit. Other DHCD rental sources such as HOME are made available during the same competitions.

LIHTC Evaluation and Selection Criteria During its funding competitions, DHCD selects tax credit projects based on criteria such as: **appropriateness of site; design and proposed scope of work; overall cost and amount of subsidy; target income levels; capacity of development team; marketability and feasibility of a project.**

LIHTC Selection Team

Projects seeking LIHTC alone or in combination with other DHCD rental resources are reviewed and unwritten by the LIHTC staff with the support of contract architects.

HOME Investment Partnerships Program (HOME)

HOME Description

HOME is a federally-funded program that assists in the production and preservation of affordable housing for low and moderate-income families and individuals. The program funds a broad range of activities including new construction and acquisition and rehabilitation of existing properties.

HOME Funding Competitions

DHCD makes HOME funding available through a **Notice of Funding Availability (NOFA)** twice yearly. For-profit and non-profit developers, non-profit organizations designated as Community Housing Development Organizations (CHDOs) and municipalities in cooperation with for-profit or non-profit developers are eligible to apply for funding. All rental projects are awarded funds on a competitive basis.

HOME Evaluation and Selection Criteria

A number of selection criteria are taken into consideration when determining which projects will receive funding. An applicant must demonstrate that the project has: a **strong overall concept, competent development team, suitable site and design**, and is **financially feasible**. The **scope of rehabilitation or construction** is a factor, as well as the **total development cost** for properties included in the proposal. There must be a **demonstrated need** for the project in the **target neighborhood** and **evidence of local support**. Furthermore, a project's **readiness to proceed** and the developer's form of **site control** are evaluated during a project's review.

HOME Selection Team

Applicants may seek HOME funds in conjunction with other DHCD resources, with the exception of DHCD Housing Stabilization Funds (HSF). If a project is seeking both HOME monies and Low Income Housing Tax Credits (LIHTC), then the LIHTC staff will take the lead during the project's review and underwriting process. For projects not seeking LIHTC, the HOME and Housing Stabilization Fund teams partner in the review and rely on input from contract architects.

Housing Stabilization Fund (HSF)

HSF Description

The Housing Stabilization Fund (HSF) is a state funded bond program that assists in the production and preservation of affordable rental projects that serve both families and individuals with annual incomes at or below 80% of the area median income.

HSF Funding Competitions

DHCD makes HSF funding available through a **Notice of Funding Availability** (NOFA) twice yearly. For-profit and non-profit developers, local housing authorities and municipalities in cooperation with for-profit or non-profit developers are eligible to apply for funding. All projects are awarded funds on a competitive basis.

HSF Selection and Evaluation Criteria

A number of selection criteria are taken into consideration when determining which projects will receive funding. An applicant must demonstrate that the project has: a **strong overall concept, competent development team, suitable site and design**, and is **financially feasible**. The **scope of rehabilitation or construction** is a factor, as well as the **total development cost** for properties included in the proposal. There must be a **demonstrated need** for the project in the target neighborhood and **evidence of local support**. Furthermore, a project's **readiness to proceed** and the developer's form of **site control** are evaluated during a project's review.

HSF Selection Team

Applicants may seek HSF funds in conjunction with other DHCD resources, with the exception of DHCD HOME funds. If a project is seeking both HSF monies and Low-Income Housing Tax Credits (LIHTC), then the LIHTC staff will take the lead during the project's review and underwriting process. For projects not seeking LIHTC, the Housing Stabilization Fund and HOME teams partner in the review and rely on input from contract architects.

Facilities Consolidation Fund (FCF)

FCF Description

FCF is a state bond-financed program that funds community-based housing for clients of the Department of Mental Health (DMH) and Department of Mental Retardation (DMR). Only non-profit housing development agencies are eligible to apply. FCF contributes a maximum of 50% of total project development costs, with a recommended limit of \$500,000 per project.

Loans are structured as 0%, deferred payment loans with a 30-year term. DHCD may extend the loan period for an additional 10 years if the property

continues to be used for DMR or DMH-approved purposes. Loans are subject to deed restrictions and title transfer agreements as provided for in loan documents, including a promissory note, mortgage and land use restriction.

FCF Funds Made Available On An On-going Basis

All housing must be pre-approved by DMR or DMH. These agencies provide services to residents, and all residents are DMH or DMR clients. (N.B. DHCD has advised DMH and DMR that no PHA can accept PBA projects that require applicants to be clients of a particular organization or have a particular disability in order to be eligible for selection. The basis for selection must be in accordance with 983.251(d). Projects are underwritten for economic feasibility by DHCD's technical assistance partner, the Community Development Economic Assistance Corporation (CEDAC).

DHCD makes FCF funding available continuously. Applicants must complete a pre-application and, if approved, submit a *One Stop Housing Application* to both DHCD and CEDAC.

FCF Selection and Evaluation Criteria

FCF loans may be used for the reasonable and necessary **hard and soft costs** to develop an eligible project, including **costs of acquisition, construction, architecture/engineering, environmental testing and remediation, insurance, taxes, surveys and permits, development consultants, legal services, financing, relocation, title and recording, inspection services, marketing and rent-up, and developer overhead and fees.**

FCF Selection Team

Housing Innovations Fund (HIF)

HIF Description

HIF is a state bond-financed program that assists in the production and preservation of affordable "innovative" housing for low and moderate-income families and individuals. HIF projects typically involve a substantial level of supportive services for residents, including single person occupancy (SRO) housing, senior housing, and various kinds of transitional housing for homeless people, veterans, victims of domestic violence and recovering substance abusers. The program funds a broad range of activities including

the hard and soft costs of acquisition, renovation and new construction. HIF loans are for 30 years and the maximum amount is typically \$500,000 or up to 50% of the projects total development cost (TDC). 50% of residents in HIF projects must be low income (80% AMI or less), and 25% must be extremely low income (30% AMI or less).

HIF Funding Competitions

DHCD makes HIF funding available through a **Notice of Funding Availability** (NOFA) twice yearly. Only non-profit developers are eligible for HIF. Projects are awarded funds on a competitive basis.

HIF Evaluation and Selection Criteria

A number of selection criteria are taken into consideration when determining which projects will receive funding. An applicant must demonstrate that the project has an **HIF-eligible purpose**, a **competent development team**, **suitable site and design**, and is **financially feasible**. The project must **have secured or be able to secure funding from other sources**. The adequacy of the **scope of rehabilitation or construction** is considered, as well as the **total development cost**. The **appropriateness, quality and continuing availability of supportive services** must be **demonstrated**. Finally, the project's **readiness to proceed** is evaluated.

HIF Selection Team

Applicants typically seek HIF funds in conjunction with other DHCD resources. If a project is seeking HIF in combination with Low Income Housing Tax Credits (LIHTC), HOME or HSF funds, then those program's staff typically take the lead during the project's review and underwriting process.

DHCD subcontracts with the Community Economic Development Assistance Corporation (CEDAC) to provide technical assistance, underwriting review and loan closing services for HIF.

Add Community Based Housing description

ATTACHMENT B

Subsidy Layering Review Checklist for Projects using Section 8 Project Based Voucher (PBV) Assistance

Project Name, Location:

__ Narrative Description of Project, including:

- __ Total number of units
- __ Type of unit, bedroom distribution
- __ Portion and type of units receiving assistance, compliance with partial assistance requirements

__ Sources of Funds:

- __ Each Source Listed Separately with Details
 - __ Principle
 - __ Interest Rate
 - __ Amortization Term

__ Uses of Funds:

- __ Detailed Breakdown of Project Costs, including hard and soft cost items

__ Commitment Letters From All Sources of Financing Disclosing Significant Terms

__ Tax Credit Allocation Commitment Letter from State Housing Finance Agency

- __ Amount of Credits Reserved, or
- __ IRS Form 8609

__ Historic Tax Credits (as applicable)

- __ Amount of Credit

__Equity Investment Commitment Letter

__Amount of Investment

__Equity Contribution Schedule showing amount and timing

__Bridge Loan Details (as applicable)

__Appraisal Report establishing the “as is” value of the property before construction or rehabilitation , and without consideration of any financial implications of tax credits or project-based assistance.

__Operating Proforma showing projected project income, expenses and cash flow for at least fifteen years out

__Housing Authority Approval of PBA Voucher Assistance for Project

__Standard Disclosure and Perjury Statement, Identity of Interest Statement

__Form HUD-2880

__Initial Contract Rents

__Housing Authority letter confirming gross contract rents with applicable tenant utility allowances

Attachment C

Davis-Bacon Requirements

Monitoring D-B consists of downloading the current wage and fringe benefit rates from the above-referenced web address for all trades people and apprentices who will be employed by the GC, and all subcontractors, and establishing a D-B enforcement file. Each week the GC is responsible for submitting to the RAA a certified wage report, preferably on Form WH-347. All the wage reports and any other documents pertinent to the D-B compliance must be kept in the D-B enforcement file.

In the event that a complaint of non-compliance with D-B is lodged with the HUD Labor Relations Office (LRO), it will request a complete copy of the enforcement file as part of its investigation, so it is important that this file always be kept current. Should the RAA interviews with employees indicate a possible problem with reported versus actual wages paid, the RAA must first bring this to the attention of the GC in writing. If the apparent discrepancy is not resolved to the satisfaction of the RAA then the RAA must report it in writing to the LRO, with a copy to DHCD. A copy of the discrepancy letter mailed to the GC, along with a copy of any response, must accompany the report.

The LRO does not require that the GC use form WH-347, provided that all the same information is included on the GC's own form. If the GC elects not to use WH-347, which has the certification language on the back, then the GC must either use the Payroll Certification form WH-348, or attach to the payroll report a copy of the back of WH-347 or use the exact word for word language that it contains to certify the payroll separately. (Forms are available at www.hudclips.org/subscriber/html/forms.htm)

The payroll report(s) must list all employees, both those directly employed by the GC and all those working for subcontractors. If form WH-347 is not used by the GC, the format used must contain all the information listed on that form. These reports should be numbered sequentially starting with number One (1) for the first week of construction and continuing each week until the project is completed and accepted for HAP by the RAA. This sequential numbering relieves the GC of the responsibility to submit a "no work" payroll for any period of temporary work stoppage.

At the start of construction the RAA must visit the site and insure that the poster- Notice to Employees - (form WH-1321) and the-Project Wage Rate Sheet- are prominently displayed in a place where all employees are likely to see them and where they are protected from the elements. The RAA should interview a representative number of employees of each contractor on-site at this initial visit using form HUD-11 to confirm wage rates, fringe benefits and overtime over 40 hours

Periodically during the course of the construction, the RAA should visit the site to monitor that the work is being done in a manner that will insure compliance with HQS and to interview some employees to insure that they are receiving the amounts shown on the certified weekly payroll(s). Again, the RAA may request DHCD assistance with these tasks.

At completion of the work, and certification by the owner that it was completed in accordance with HQS and all the AHAP requirements and that the owner complied with labor and equal opportunity requirements, the RAA may accept the units for HAP contract. In addition to these required documentations, the RAA must get a copy of the certificate of occupancy and if applicable the lead compliance documentation. Upon final HQS inspection by the RAA to insure that all the PBV units are in compliance with HQS and additional DHCD standards, the HAP contract may be executed. In a rehab project where there are in-place tenants or returning from temporary relocation tenants, these must be certified as program eligible prior to HAP execution.